

BC Treaty Referendum Asks Voters to Extinguish First Nations

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By Beverley O'Neil

Since the British Columbia Modern Day Treaty Making Process began in 1993, the settlement of treaties has been plagued with problems inflamed by political stalling and racism. Yet this was not the start of treaty making in BC. The process was actually initiated in the 1850s by Lands Commissioner James Douglas, while in most of Canada treaties were signed or soon to be completed. Those treaties defined how non-Aboriginal and first Nations would share first Nation lands and resources, and how those first Nations would be compensated. Shortly after James Douglas began negotiating treaties, the treaty process halted around the 1860s when Joseph Trutch became the Land Commissioner. Trutch denied that first Nations existed let alone had rights or were a people thus leaving the land question unresolved. And so the plight of first Nations began.

Realizing some sort of relationship needed to be set-up between Canada and the first Nations, in 1876 the federal government passed the Indian Act. The Act defined who was legally entitled to be registered as an 'Indian' and those Indian people who would no longer be considered one by the federal government. It defined the legal and fiduciary responsibilities of the government over 'registered Indians' and their Bands covering such matters as reserve lands and resources, membership, taxation and governance. Still the land question remained.

In continuance with Trutch's views, the provincial and federal governments passed laws and regulations avoiding, stalling and discouraging the resolution of the land question. Laws were passed that prevented people from assisting first Nations with legal actions to settle claims, disabled first Nations from raising funds for legal defences or negotiations, and banned Aboriginals from gathering for social, ceremonial or cultural purposes. Aboriginals were confined to tracts of land a fraction of the size of their traditional territories. These lands were called reserves set-aside with the crown holding these lands 'in trust' for Indians like sanctuaries are set-aside for wildlife. It wasn't long before these lands were subject to cut-off or expropriated for other uses, children removed from their homes, Indian war veterans denied access to War Veteran benefits, and Indian women legally discriminated against by ejecting them from their community for marrying non-Aboriginal men. First Nations were paralysed from participating in society or the economy, and first Nations and their cultures began to disintegrate leaving them teetering on the edge of extinction.

Eventually many of the restrictive laws and regulations were removed and first Nations began fighting for their rights through the Canadian court system and bringing matters to international forums such as the United Nations. In the 1970s, the Supreme Courts started hearing and ruling on cases that became landmark rulings, such as Delgamuukw, Guerin and Marshall. These cases began the recognition of the existence of Aboriginal rights and title, and stressed the need for Canada and British Columbia to reach agreement with first Nations on these matters.

But despite these rulings, these two levels of government continually reinterpreted the Acts that apply to Indians passing new Acts and regulations that infringe on these rights. First Nations have been forced to defend themselves in costly and lengthy court cases or promote their issues through what the majority dubs 'civil disobedience' or 'criminal activities'. It has been an upward, backward and side-ways battle no matter which direction first Nations turned.

In 1993 the federal and provincial governments along with first Nations in BC created the tri-partite Modern Day Treaty Making Process based on the 19 principles recommended by the BC Claims Task Force. These principles laid the foundation for the treaty negotiations, were agreed to by all three parties, and are in use by the 40 sets of tables underway involving 49 first Nations. Those 49 first Nations represent 147 of the 197 Bands in BC with the remaining 50 Bands opting to stay out of the treaty process. Many of these non-participating Bands stressed that treaty negotiations should be bilateral involving the federal government and the first Nation, not the province.

According to the BC Treaty Commission, the cost of negotiations to those 147 first Nations have totalled \$186 million of which \$149 million are loans to be repaid by them at the conclusion of their treaty. These costs are escalating the longer treaties remain unsigned, and first Nations become uneasy as they realize the debt to their children grows with nothing to show for it.

The federal government has provided the financing to first Nations for the majority of these costs. For every \$100 of these funds, the federal government provided \$92, while BC contributed \$8. Using this formula, over the past eight years the estimated cost to BC has been \$14.9 million.

The attacks against the Indians continue. Now BC wants to change the rules, renege on the Treaty process they agreed to, and redefine the principles. In 2002, the new weapon wielded at Indians is the British Columbia Treaty Referendum at a projected cost of \$10 million over the \$14.9 million already invested.

What does the BC government hope to gain by initiating a referendum? The official response expressed by Attorney General Geoff Plant, minister responsible for treaty negotiations, is "We are encouraging voters to participate in the referendum so that we establish a publicly supported mandate that will help us move forward and achieve tangible results in the treaty process."

In the first few days of April after the distribution of treaty referendum ballots began, Angus Reid, a noted statistician and consultant with more than thirty years in the polling business, commented on the referendum through the Vancouver Sun newspaper. "Though we can be justifiably concerned about the cost of this initiative, its deeper harm comes in the false picture it will give of the true state of attitudes on this complex question..." and added, "... there is little to be gained in asking a question that almost everyone will answer the same way."

And, the eight questions are posed in such a manner that one would be reluctant to vote anything but 'yes' to each of them. Voters who oppose the referendum or disagree with the statements have no means to express anything other than 'yes' or 'no' to have their response counted. According to the Referendum Act, a ballot without a mark indicating 'yes' or 'no' is to be rejected. As well, "the entire ballot must be rejected by the referendum official..." if the ballot "is uniquely marked, or otherwise uniquely dealt with, in such a manner that the voter could reasonably be identified; ... is altered in any way by the voter including, without limitation, the amendment of the wording of any question and any written comments."

There is no provision in the referendum to count a ballot that has been intentionally spoiled as an expression of dissatisfaction. Although spoiled ballots can be replaced, the expectation is a response of 'yes' or 'no' would be still be chosen for each of the eight questions.

Even further examination of the referendum reveals that 'yes' is the only vote the provincial government will be bound to recognize. The BC Referendum Office reports the provincial governments positions on the outcome... "The provincial government will adopt principles that receive more than 50 percent of the validly cast 'yes' votes as the basis of its negotiating position with Canada and First Nations." How the province will respond to 'no' or no-answer or a majority of rejected ballots or if the majority of ballots are not returned is unclear.

Upon review of the questions, many other questions arise. Beginning with the first question on it's own is misleading. It reads, "Private property should not be expropriated for treaty settlements." From the beginning of the treaty process, many first Nations voiced a similar sentiment. "We have no intention of doing to fee simple land holders what was done to us... expropriate lands and resources." First Nations commonly recognize that after Treaties are signed, Aboriginals and non-Aboriginals will continue to live side-by-side; therefore building good relationships is required for today, setting the stage for many generations to come.

Other referendum questions continue on the same vein as the first. The structure of these questions leaves the reader to multiple interpretations provoking fear that a first Nation government would operate without scruples and worse than existing and past non-Aboriginal governments. Principle statements imply that first Nations would - 1) reject terms and conditions of leases and licenses; 2) that first Nations would close off access of the use of parks and other protected areas for the benefit of use to British Columbians; and 3) that first Nations would plan without the consideration of local governments, are all inflammatory principles. The statements also begin to predefine the authorities first Nation governance would have, and propose to British Columbians that the BC government has the ability to overturn jurisdictional responsibility of the federal government on first Nation matters.

To help voters understand these statements, public groups have initiated information sessions. Some of these sessions have produced forums where inflammatory opinions are given a platform rather than provide information to help voters determine an appropriate response, albeit 'yes', 'no' or a means by which a voter's opposition to the process could be recognized.

Kim Brooks, an Aboriginal person, attended one of the Vancouver Simon Fraser University series called 'The Referendum and Beyond' with the expectation that she would become better informed on the referendum, to learn about the context of treaties, what a referendum is, and understand why the questions are important. "Instead I heard about the over representation of Aboriginal people in other social settings and why treaties won't contribute to resolving these problems. There was no acknowledgement of the purpose of treaties or the benefits or opportunities presented by them."

The BC government has continuously insisted that the outcome of treaties must create certainty; yet stalling tactics such as the treaty referendum contradicts this message. The referendum promotes an environment of uncertainty, contributing to investor fear of BC, and frustrating business. Eight years into the process, there is no treaty signed. The process is far from establishing certainty.

Chief Justice Lamer of the Supreme Court of Canada in the Delgamuukw decision stated, "Treaty negotiations with first Nations are the most complicated and the most important challenge facing Canada in the twentieth century." In concert, the BC Treaty Commission remarked, "This is unarguably the most comprehensive and complex of its kind in the world today." This is not a matter that can easily be addressed with a series of yes/no statements.

The publics require the opportunity to make informed decisions based on factual information from many sources.

One has to question why the Liberals chose to initiate a process that is so clearly stacked against Aboriginals. The late Chief Joe Mathias was often heard saying, "This is not about fairness. This is about the tyranny of numbers." And he was right, Aboriginal people are less than 4 percent of BC's population, outnumbered by non-Aboriginals 25 to 1. The majority are being asked to define the future of the minority. In essence, the referendum asks voters to determine whether first Nations have the right to continue to exist by asking voters to cast ballots that lead to the extinction of Aboriginal people.

Perhaps too much emphasis on the outcome of the referendum is being applied. Roy Francis, negotiator for the Sliammon First Nation near Powell River, comments, "BC is only one of three parties in this negotiation. We shouldn't get distracted by or place too much emphasis on the referendum. It's the three parties that decide the outcome of the negotiations, not one."

Some groups are exploring whether the treaty process can continue without the BC governments involvement.

One also has to ask, "Where is the third party, the federal government, on this matter? What is their response?" Despite the requests of the first Nations to investigate and respond to this, the federal government has been virtually quiet adding only innocuous statements reaffirming their commitment to the treaty process. Department of Indian Affairs and Northern Development Minister Robert Nault said, "We all made a clear commitment when we endorsed the recommendations of the BC Claims Task Force... But we must allow the process to evolve...". No further comment by the federal government is expected, although first Nations continue to demand a stronger response.

First Nations do not expect to see an outcome in the referendum that will favor them, and they know they will not be alone in this loss, all British Columbians and corporations will join them. For who would choose to enter negotiations with someone who does not intend to negotiate, but instead approaches negotiations with 'non-negotiable terms' they are 'legally bound' to uphold? This is a 'take it or else' approach, not negotiations. And, who would choose to sign an agreement with the province when it reneges on its agreements and initiates actions that promote the eradication of the minority? And, if you represented Alberta, Canada, or the United States forest industry would you believe BC would uphold any agreement you signed with them.

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Poem by Pastor Niemller, Berlin 1939

First they came for the Jews,
But I did not speak out,
Because I was not a Jew.

Then they came for the Communists,
And I did not speak out,
Because I was not a Communist.

Then they came for the trade-unionists,
And I did not speak out,
Because I was not a trade-unionist.

Then they came for the Catholics,
And I did not speak out,
Because I was not a Catholic.

Then they came for me,
And there was no one left to speak out for me.